

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

WEDNESDAY, JUNE 22, 2011

VOLUME 2

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:30 a.m.

Wednesday, June 22, 2011

Syracuse University

College of Law

Grant Auditorium

Syracuse, New York

COMMITTEE MEMBERS PRESENT:

Ms. Rosita Worl, Chair

Mr. Alexander Barker

Ms. LindaLee Kuuleilani Farm

Mr. Eric Hemenway

Mr. Adrian John

Mr. Mervin Wright, Jr.

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1 **CALL TO ORDER**

2 ROSITA WORL: Okay. We will go ahead and call
3 the meeting back to order. The first agenda item
4 this morning is our 2010 Report to Congress. We
5 did have motion made yesterday to adopt and it was
6 seconded and was up for discussion, and we have
7 some changes. So Adrian.

8 (Discussion off record.)

9 **PRESENTATION, DISCUSSION, AND APPROVAL OF THE**
10 **REVIEW COMMITTEE'S ANNUAL REPORT TO CONGRESS FOR**
11 **2010 - CONTINUED**

12 ADRIAN JOHN: Okay. Under recommendation
13 number 2, we had "Increase civil penalties," and
14 then a request to either strike out the first
15 sentence – after looking at it, we're just looking
16 at really enforcement, is what it is. So we would
17 keep that first sentence but include "Develop an
18 enforcement mechanism for Federal agencies" –

19 ERIC HEMENWAY: For compliance.

20 ADRIAN JOHN: – "for compliance." Yes, and
21 then we would still keep the rest of it, "whereas,
22 the civil penalties would go towards the museums,"
23 so it was like an "and."

24 DAVID TARLER: Just so that we can facilitate
25 the processing of the report to Congress, you might

1 wish to read your amended section there so that I
2 can take the notes and then we can proceed with
3 processing the report.

4 ADRIAN JOHN: Okay.

5 ERIC HEMENWAY: So for recommendation 2 we
6 were —

7 DAVID TARLER: And if you could do that slowly
8 so I could write it down I would appreciate it.

9 ERIC HEMENWAY: Okay. The recommendation would
10 be changed. We would eliminate "Increase civil
11 penalties" to "Develop compliance mechanisms for
12 Federal agencies."

13 DAVID TARLER: So if I understand correctly,
14 then the heading of that recommendation, "Increase
15 Civil Penalties," would be stricken, and in its
16 place would be "Develop compliance mechanisms for
17 Federal agencies."

18 ERIC HEMENWAY: Correct.

19 ROSITA WORL: And then it would remain the
20 same?

21 ERIC HEMENWAY: We would strike, where is it,
22 "an increase in civil penalties for non-
23 compliance," because as of right now there are no
24 civil penalties for Federal agencies, so we would
25 strike that sentence.

1 ALEXANDER BARKER: The second sentence?

2 ERIC HEMENWAY: It would be –

3 DAVID TARLER: So you wish to strike the entire
4 second sentence, beginning with the words, "While
5 we recognize," and ending with the words,
6 "incentive for some institutions."

7 ERIC HEMENWAY: We would strike, "The committee
8 feels that if there is an increase in civil
9 penalties for non-compliance it may act as an
10 incentive for some institutions."

11 DAVID TARLER: So let me read back to you the
12 second sentence as you would have it, "While we
13 recognize that there are a range of reasons why
14 institutions are not in compliance, some of which
15 relate to staffing and funding shortages."

16 ROSITA WORL: Strike the "While."

17 DAVID TARLER: And strike the word "While"?

18 ROSITA WORL: Yeah. "We recognize that there
19 are" –

20 DAVID TARLER: So the second sentence would
21 read, "We recognize that there are a range of
22 reasons why institutions are not in compliance,
23 some of which relate to staffing and funding
24 shortages." – period. Is that correct?

25 ERIC HEMENWAY: Yes.

1 ROSITA WORL: And then the rest of the – the
2 rest would remain the same?

3 ADRIAN JOHN: No, number – recommendation
4 number 6, it has "Future GAO study on museum
5 compliance. As highlighted in our summary comments
6 above, related to the GAO report on NAGPRA, the
7 Review Committee found many of the points
8 highlighted in the Report to be helpful –
9 particularly the recommendations offered in the
10 Report to ensure that Federal agencies, some of
11 whom are still out of compliance 20 years after" –
12 we would change "implication" to "enactment" – "of
13 this law, take active steps toward compliance."
14 And this is where we have it, "We recommend the GAO
15 undertake a similar study regarding museum
16 compliance."

17 (Discussion off record.)

18 DAVID TARLER: And so to clarify, under
19 recommendation 6 in the last sentence of that
20 recommendation as written, the word "implication"
21 would be stricken, and it would be replaced by the
22 word "enactment."

23 ADRIAN JOHN: Yes.

24 DAVID TARLER: And a last sentence would be
25 appended to that recommendation, which reads "We

1 recommend that the GAO undertake a similar study of
2 museum compliance," period. Is that correct?

3 ADRIAN JOHN: Yes.

4 (Discussion off record.)

5 ROSITA WORL: Okay. Are there any further
6 changes?

7 ALEXANDER BARKER: Madam Chair, may I make a
8 suggestion?

9 ROSITA WORL: Go ahead.

10 ALEXANDER BARKER: Refer to recommendation 2,
11 now that the title is "Develop compliance
12 Mechanisms for Federal Agencies," I believe the
13 remainder of the paragraph toward the end is
14 talking about this working in concert with grants
15 to encourage compliance. I don't believe Federal
16 agencies are eligible for NAGPRA grants.

17 DAVID TARLER: That's correct.

18 ALEXANDER BARKER: So that sentence may be
19 superfluous. But I agree that tribes may need
20 additional funding, but it won't address the need
21 for Federal agencies.

22 ROSITA WORL: Okay. So we'll strike that, that
23 whole sentence, the rest of that paragraph.

24 ALEXANDER BARKER: Or perhaps just strike the
25 "grants to museums" since that doesn't address the

1 Federal agencies, but it may be important for
2 tribes to be able to be funded to work more closely
3 with the agencies. And again, as part of that
4 friendly amendment, to say something along the
5 lines of "grants to tribes in order to help
6 agencies reach compliance."

7 ROSITA WORL: Okay. Are there any objections
8 to that amendment? Okay. Let's go ahead and read
9 the entire -

10 DAVID TARLER: If I understand correctly then,
11 you recommend that the last sentence read, under
12 recommendation 2, "We envision that this
13 recommendation would work in connection with our
14 recommendation for increased funding for grants to
15 museums so that Federal agencies who are out of
16 compliance for lack of funding" - "for lack of
17 funding to tribes will have ample opportunity to
18 apply for funds to support their NAGPRA work"?

19 ALEXANDER BARKER: Madam Chair, may I?

20 I believe what we were suggesting is it "would
21 work in connection with our recommendation for
22 increased funding for grants to tribes to help
23 Federal agencies out of compliance achieve
24 compliance."

25 DAVID TARLER: Okay. If you would like to read

1 that sentence back to me, very slowly, I will make
2 those –

3 ALEXANDER BARKER: "We envision that this
4 recommendation would work in connection with our
5 recommendation for increased funding for grants to
6 tribes to help agencies out of compliance achieve
7 compliance."

8 DAVID TARLER: Let me read that last sentence
9 back. "We envision that this recommendation would
10 work in connection with our recommendation for
11 increased funding for grants to tribes to help
12 Federal agencies who are out of compliance achieve
13 compliance," period.

14 ALEXANDER BARKER: "For tribes to help Federal
15 agencies," yes, in the anticipation that working
16 with Federal agencies to achieve compliance will
17 result in additional costs to tribes, as an
18 explanation.

19 ROSITA WORL: Okay.

20 ALEXANDER BARKER: I'm sorry. Is the grammar
21 confusing or is the meaning uncertain?

22 DAVID TARLER: I'm not – well, I think there
23 are two items here, and the first is you had
24 stricken "The committee feels that an increase in
25 civil penalties for non-compliance may act as an

1 incentive for some institutions." That's the
2 recommendation. The sentence following that said,
3 "We envision that this recommendation would work in
4 connection with our recommendation for increased
5 funding." As the words, "The committee feels that
6 an increase in civil penalties for non-compliance
7 may act as an incentive for some institutions," has
8 been stricken, and as a result that recommendation
9 has been stricken, I – it might be confusing then
10 to follow with a sentence that says, "We envision
11 that this recommendation would work in connection
12 with our recommendation," as the recommendation in
13 the previous sentence had been stricken.

14 ALEXANDER BARKER: I think – I believe the
15 intent of the sentence is that increased funding to
16 tribes to help them work with Federal agencies to
17 achieve compliance will work with the
18 recommendation to "Develop compliance mechanisms
19 for Federal agencies," not with the sentence that
20 was stricken.

21 CARLA MATTIX: So it works with the –

22 LINDALEE FARM: Madam Chair?

23 ROSITA WORL: Go ahead.

24 LINDALEE FARM: As perhaps a point of
25 clarification where we have stricken, "The

1 committee feels that an increase in civil
2 penalties," that sentence, if we would amend that
3 sentence to read, "The committee feels that the
4 development of a mechanism for compliance by
5 Federal agencies may act as an incentive for
6 Federal agencies," in order to place a
7 recommendation in there so that we can refer back
8 to this recommendation. But the recommendation
9 really is the development of a mechanism to ensure
10 compliance by Federal agencies.

11 ROSITA WORL: So maybe they should – the
12 committee recommends –

13 LINDALEE FARM: Right.

14 ROSITA WORL: Yes, okay. What –

15 DAVID TARLER: In that case, I think we need to
16 start at the beginning and read the proposed
17 recommendation number 2 in its entirety.

18 LINDALEE FARM: Okay. Mr. Tarler, if you could
19 read what you currently have and we'll –

20 DAVID TARLER: I'll begin and you can continue.

21 LINDALEE FARM: Okay.

22 DAVID TARLER: "Recommendation 2: Develop
23 compliance mechanisms for Federal agencies. As the
24 GAO report so clearly demonstrated, there are key
25 Federal agencies that have still not complied with

1 the law. We recognize that there are a range of
2 reasons why Federal agencies are not in compliance,
3 some of which relate to staffing and funding
4 shortages." This is where I ask where your
5 recommendation – where your recommended language
6 comes in.

7 LINDALEE FARM: Okay. "The committee
8 recommends that there be a development of a
9 mechanism for Federal agencies" –

10 DAVID TARLER: Excuse me.

11 CARLA MATTIX: He's trying to write it.

12 LINDALEE FARM: I apologize.

13 DAVID TARLER: Okay.

14 LINDALEE FARM: – "to come within compliance."

15 DAVID TARLER: Okay.

16 LINDALEE FARM: And would that be a proper
17 sentence if we just put a period there?

18 DAVID TARLER: It is a sentence, yes.

19 LINDALEE FARM: Okay. "We envision that this
20 recommendation," and Mr. Tarler, that would relate
21 back to the sentence that I just read, and then we
22 would follow on with – and I don't have it down
23 exactly as Mr. Barker had. If you could read what
24 he had said, we'll see if it will all flow
25 together.

1 DAVID TARLER: Yes. "We envision that this
2 recommendation would work in connection with our
3 recommendation for increased funding for grants to
4 tribes" -

5 ALEXANDER BARKER: "To work with Federal
6 agencies to achieve compliance."

7 DAVID TARLER: - "to work with Federal agencies
8 to achieve compliance." And can I read back the
9 entire paragraph now?

10 ROSITA WORL: Okay. Let's read the entire
11 paragraph.

12 DAVID TARLER: "Recommendation 2: Develop
13 compliance mechanisms for Federal agencies. As the
14 GAO report so clearly demonstrated, there are key
15 Federal agencies that have still not complied with
16 the law. We recognize that there are a range of
17 reasons why Federal agencies are not in compliance,
18 some of which relate to staffing and funding
19 shortages. The Committee recommends that there be
20 the development of a mechanism for Federal agencies
21 to come within compliance. We envision that this
22 recommendation would work in connection with our
23 recommendation for increased funding for grants to
24 tribes to work with Federal agencies to achieve
25 compliance."

1 ROSITA WORL: Okay. That is the amendment.
2 Let's go ahead and move that amendment.

3 **REVIEW COMMITTEE MOTION**

4 ADRIAN JOHN: I make a motion.

5 ROSITA WORL: We have a motion to move that
6 amendment. Do we have a second?

7 LINDALEE FARM: I'll second it.

8 ROSITA WORL: We have a motion made and
9 seconded to amend, as read by Mr. Tarler. All
10 those in favor signify by saying aye.

11 ALEXANDER BARKER: Aye.

12 LINDALEE FARM: Aye.

13 ERIC HEMENWAY: Aye.

14 ADRIAN JOHN: Aye.

15 ROSITA WORL: Aye.

16 MERVIN WRIGHT, JR.: Aye.

17 Those opposed say no.

18 That amendment is adopted.

19 The next one you had?

20 DAVID TARLER: And Madam Chair, you also
21 amended recommendation 6. Did we have a – was that
22 motion applicable to recommendation 6, as well?

23 ROSITA WORL: Let's go ahead and move an
24 amendment.

25 **REVIEW COMMITTEE MOTION**

1 ADRIAN JOHN: Yeah, we'll have a motion for
2 that to amend number 6.

3 ROSITA WORL: Okay. And that was as read,
4 previously read.

5 Do we have a second?

6 LINDALEE FARM: Second.

7 ROSITA WORL: We have a motion made and
8 seconded to amend recommendation 6 as previously
9 read. All those in favor signify by saying aye.

10 ALEXANDER BARKER: Aye.

11 LINDALEE FARM: Aye.

12 ERIC HEMENWAY: Aye.

13 ADRIAN JOHN: Aye.

14 ROSITA WORL: Aye.

15 MERVIN WRIGHT, JR.: Aye.

16 Those opposed say no.

17 That amendment is adopted.

18 Do we have any further -

19 **REVIEW COMMITTEE MOTION**

20 ADRIAN JOHN: Yeah, one more. A motion to just
21 strike recommendation number 9.

22 ROSITA WORL: Okay. We have a motion to amend
23 to delete recommendation number 9. Do we have a
24 second?

25 LINDALEE FARM: Second.

1 ROSITA WORL: All those in favor signify by
2 saying aye.

3 ALEXANDER BARKER: Aye.

4 LINDALEE FARM: Aye.

5 ERIC HEMENWAY: Aye.

6 ADRIAN JOHN: Aye.

7 ROSITA WORL: Aye.

8 MERVIN WRIGHT, JR.: Aye.

9 Those who are opposed say no.

10 That recommendation is deleted.

11 Okay. So now let's just go ahead and adopt
12 the motion – the report as amended. Do I have a
13 motion to adopt as amended?

14 **REVIEW COMMITTEE MOTION**

15 ADRIAN JOHN: Yes, I motion.

16 ROSITA WORL: We have a motion made. Do we
17 have a second?

18 LINDALEE FARM: Second.

19 ROSITA WORL: We have a motion made and
20 seconded to adopt the report to Congress – 2010
21 Report to Congress as amended. All those in favor
22 signify by saying aye.

23 ERIC HEMENWAY: Aye.

24 ADRIAN JOHN: Aye.

25 ROSITA WORL: Aye.

1 Those opposed say no.

2 MERVIN WRIGHT, JR.: No.

3 ROSITA WORL: Our – we have one no. All the
4 others are affirmative. So the motion to adopt as
5 amended is adopted.

6 ALEXANDER BARKER: Madam Chair, there was also
7 one abstention.

8 ROSITA WORL: Oh, we have one abstention.

9 LINDALEE FARM: Madam Chair, I would also
10 choose to abstain from actually adopting the
11 recommendation. I am participating in the changes
12 in order to facilitate the changes in the annual
13 report, but I am abstaining since I was not part of
14 the drafting of the report.

15 ALEXANDER BARKER: As am I.

16 ROSITA WORL: Okay. So for clarification, we
17 have two abstentions, rather than a no vote.

18 ADRIAN JOHN: I think we have one more, a no
19 vote.

20 ROSITA WORL: Oh, a no vote?

21 ADRIAN JOHN: Yeah.

22 ROSITA WORL: Who's the no vote? You're voting
23 no?

24 MERVIN WRIGHT, JR.: Yeah.

25 ROSITA WORL: Okay. We have one no – two

1 abstention, one no, and three affirmative. Okay.

2 MERVIN WRIGHT, JR.: Madam Chair?

3 ROSITA WORL: Yes, go ahead.

4 MERVIN WRIGHT, JR.: I'd just like to make a
5 comment with regard to my objection to adopting the
6 report. On page 3, or at least the version I have
7 it's on page 3, comments on 43 C.F.R. 10.11, I'm
8 certainly not pleased with the final rule, and I
9 don't agree with the terms used that we are overall
10 pleased with the rule. I know that there's
11 objection on both sides of the rule, both from the
12 scientific community, as well as from the tribal
13 community. And so I – the second paragraph says
14 that the committee was overall pleased with the
15 rule. I just feel that the committee – the
16 committee feels that several points require further
17 clarity to greatly improve the rule, so striking
18 part of that sentence, but you know, I mean if at
19 this point we're moving forward with the report as
20 it is, I would just object to the rule.

21 ROSITA WORL: We – what we could do is bring
22 this back to the table. We could have a motion to
23 bring it back to the table by yourself, and if that
24 motion is seconded and adopted, then we could move
25 your amendment, proposed amendment to delete that

1 phrase, "was pleased," and just as you read it.

2 **REVIEW COMMITTEE MOTION**

3 MERVIN WRIGHT, JR.: Okay. Well, I'd like to
4 make that motion.

5 ROSITA WORL: Okay. He voted in - he voted no.
6 He can bring it back to the table. That's my
7 understanding. So we have a motion to bring the
8 resolution back to the table. Do we have a second?

9 ADRIAN JOHN: I'll second it.

10 ROSITA WORL: Okay. All those in favor of
11 bringing back the report back to the table signify
12 by saying aye.

13 ALEXANDER BARKER: Aye.

14 LINDALEE FARM: Aye.

15 ERIC HEMENWAY: Aye.

16 ADRIAN JOHN: Aye.

17 ROSITA WORL: Aye.

18 MERVIN WRIGHT, JR.: Aye.

19 Those opposed say no. So the report is back
20 on the table. So now, do you want to move your
21 proposed amendment? Just the committee feels that
22 several points -

23 MERVIN WRIGHT, JR.: Is it - did you get what I
24 had struck from the -

25 DAVID TARLER: No, I did not.

1 MERVIN WRIGHT, JR.: On page 3 –

2 DAVID TARLER: Yes.

3 MERVIN WRIGHT, JR.: – second paragraph –

4 DAVID TARLER: Yes.

5 MERVIN WRIGHT, JR.: – just striking “was
6 overall pleased with 43 C.F.R. 10.11, Final Rule,
7 but did feel” and so the sentence would now read,
8 “The Committee feels that several points require
9 further clarity to greatly improve the rule.”
10 Because in the first sentence up above, it says the
11 committee was very pleased that the final rule for
12 disposition was published, and I agree with that
13 statement.

14 ROSITA WORL: So we have – we do have a motion
15 to delete that language?

16 **REVIEW COMMITTEE MOTION**

17 MERVIN WRIGHT, JR.: Yes, I’ll move.

18 ROSITA WORL: Okay. We have a motion made to
19 delete. Do we have a second to that?

20 DAVID TARLER: Madam Chair, may I just clarify
21 that the motion is to – is to amend the sentence to
22 read, “The Committee feels that several points
23 require further clarity to greatly improve the
24 rule.” Is that correct?

25 MERVIN WRIGHT, JR.: Yes.

1 ADRIAN JOHN: I'll second it.

2 ROSITA WORL: We have a motion made, then
3 seconded, to delete that language as read, and all
4 those in favor of the amendment signify by saying
5 aye.

6 ALEXANDER BARKER: Aye.

7 LINDALEE FARM: Aye.

8 ERIC HEMENWAY: Aye.

9 ADRIAN JOHN: Aye.

10 ROSITA WORL: Aye.

11 MERVIN WRIGHT, JR.: Aye.

12 ROSITA WORL: Those opposed say no. That
13 amendment is adopted.

14 So now we need to act on the whole report, and
15 so I need a motion to adopt the report as amended.

16 **REVIEW COMMITTEE MOTION**

17 ADRIAN JOHN: I'll motion.

18 ROSITA WORL: We have a motion made to adopt
19 the 2010 report as amended. Do I have a second?

20 ERIC HEMENWAY: Second.

21 ROSITA WORL: All those in favor signify by
22 saying aye.

23 ERIC HEMENWAY: Aye.

24 ADRIAN JOHN: Aye.

25 ROSITA WORL: Aye.

1 MERVIN WRIGHT, JR.: Aye.

2 ROSITA WORL: Those opposed say no. Do we have
3 any abstentions?

4 ALEXANDER BARKER: Yes.

5 LINDALEE FARM: Yes, Madam Chair.

6 ROSITA WORL: Two abstentions. So we have four
7 in the affirmative and two abstentions.

8 MERVIN WRIGHT, JR.: Thank you.

9 ROSITA WORL: I have to tell you that they –
10 whenever – in Alaska, whenever we have annual
11 meetings of our organizations, they always call
12 Tlingits to be the parliamentarians. We were
13 raised on parliamentary training in the Alaska
14 Native Brotherhood and Alaska Native Sisterhood,
15 and it really parallels, you know, our culture
16 because we have very structured – our social
17 organization, highly structured, and so that's the
18 way we operate at home.

19 ROSITA WORL: Okay, we're on to our next agenda
20 item, which is the action item. It's Department of
21 Interior consultation with the Review Committee on
22 the Department's discretionary review of all of the
23 regulations that are already codified in 43 C.F.R.
24 Part 10, to address two questions: should the rules
25 already published at 43 C.F.R. Part 10 be amended

1 at all?

2 DAVID TARLER: Madam Chair, may I briefly
3 introduce the action item?

4 ROSITA WORL: Yes.

5 **ACTION ITEM: DEPARTMENT OF THE INTERIOR**
6 **CONSULTATION WITH THE REVIEW COMMITTEE ON THE**
7 **DEPARTMENT'S DISCRETIONARY REVIEW OF ALL THE**
8 **REGULATIONS THAT ARE ALREADY CODIFIED AT 43 C.F.R.**
9 **PART 10, TO ADDRESS TWO QUESTIONS**

10 DAVID TARLER: As you will recall, last year
11 marked the twentieth anniversary of the passage of
12 the NAGPRA statute. This year marks the fifteenth
13 anniversary of the effective date of the initial
14 regulations implementing NAGPRA. The regulations
15 were promulgated late in 1995 and became effective
16 early in 1996.

17 The NAGPRA statute says what is to be done and
18 what the law is. The regulations lay out a process
19 for doing what Congress says should be done. With
20 the experience of 15 years of use of the NAGPRA
21 regulations by Indian tribes, Native Hawaiian
22 organizations, museums and Federal agencies, the
23 National NAGPRA Program and the Office of the
24 Solicitor at the Department of the Interior agreed
25 that it would be worthwhile to do a discretionary

1 review of the regulations that already have been
2 promulgated at 43 C.F.R. Part 10, in order to
3 ensure consistency, both within the NAGPRA
4 regulations and between the NAGPRA regulations and
5 the statute itself, as well as clarity of the
6 NAGPRA compliance and civil enforcement process.

7 And so we are anticipating a review of those
8 regulations already published at 43 C.F.R. Part 10
9 and to draw on the experiences of NAGPRA
10 practitioners over the last 15 years, we have held
11 listening sessions to ask the two questions that
12 are presented to you today. We held a meeting with
13 Federal agency NAGPRA representatives, we held a
14 meeting with Indian tribal governments, and we held
15 a meeting for anyone and everyone who wished to
16 participate in answering the two questions or to
17 listen to what anyone had to say with respect to
18 those two questions. And so today we are
19 consulting with the Review Committee on these two
20 questions, prior to conducting our discretionary
21 review of those regulations.

22 I also would like to note that this is not the
23 last opportunity for the public to address the two
24 questions posed. The National NAGPRA Program would
25 be pleased to receive written comments and

1 suggestions, and if received by July the first,
2 will consider them during their review of the
3 regulations, and that information has been
4 published on the National NAGPRA Program's website.

5 CARLA MATTIX: Can I add a couple of things?

6 And just to add a couple things, the review is
7 not just of the regulations published in 1995, the
8 bulk of the original regulations, but everything
9 since then. So we're taking a look at everything,
10 even up to the newest regulation – part of the
11 regulations that were published last year, 10.11.
12 So everything is open to consideration for
13 clarification or anything that needs to be improved
14 in the regulations. We are not yet in a proposed
15 rule status. This is pre-proposed rule. This is
16 the very early stages of looking at this.

17 ROSITA WORL: Okay. So we will have – I mean,
18 we will have additional time to review the
19 regulations if we wish, but for now are you asking
20 for comments from the Review Committee?

21 DAVID TARLER: Yes, and one addendum, and that
22 is reference to the materials that you received and
23 which the public has received through our website,
24 the comments that were received during the three
25 listening sessions that we conducted were compiled

1 into bullet points and put in the materials by Lesa
2 Koscielski.

3 ROSITA WORL: Okay. Should we – would you like
4 to proceed by going through the comments that have
5 already been offered from the listening sessions or
6 does the committee have any specific ones that they
7 would like to raise at this point?

8 LINDALEE FARM: At your pleasure, Madam Chair,
9 I do have a question. Mr. Tarler, you said that
10 there were three listening sessions, and I do have
11 the bullet point sheet, thank you very much, that
12 was very, very helpful. My question is that you
13 had a listening session specifically with Indian
14 tribal governments. Did you have one with Native
15 Hawaiian organizations? Did you reach out
16 specifically to them?

17 DAVID TARLER: I'll ask counsel to address that
18 question.

19 STEPHEN SIMPSON: Ms. Farm, the – what has been
20 termed the listening session with the tribal
21 governments was actually announced in a "Dear
22 Tribal Leader" letter and was government-to-
23 government consultation under the Executive Order
24 on Consultation. We did have requests from Native
25 Hawaiian organizations to be included in that, and

1 they were told that they should call into the
2 listening session with the public, with the museums
3 and scientific organizations because of the
4 government-to-government nature of that particular
5 consultation session. We did have – and in fact,
6 we did have Native Hawaiian organizations call into
7 that session and you will see comments from them.

8 LINDALEE FARM: Okay. Thank you very much.

9 STEPHEN SIMPSON: Uh-huh.

10 ROSITA WORL: So this – so have we had any with
11 museums?

12 STEPHEN SIMPSON: That was that public one, as
13 well, Madam Chair.

14 ROSITA WORL: Oh, it was. Okay. Do we want to
15 go through and look at some of the comments that
16 have been made? How do you wish to proceed? Or
17 does the committee wish to act on this now or defer
18 it to the next meeting?

19 MERVIN WRIGHT, JR.: I've got a question.

20 ROSITA WORL: Merv.

21 MERVIN WRIGHT, JR.: The question that I have
22 is, I mean, looking at the action item and the
23 question being posed to the committee, as I
24 understand it, is should the rules already
25 published at 43 C.F.R. Part 10 be amended at all?

1 If the answer is yes, then how should the rules be
2 amended? Is that question similar to what we're
3 looking at here on the bullet points where that
4 question was put out to the public and to everybody
5 else?

6 DAVID TARLER: The answer is yes.

7 MERVIN WRIGHT, JR.: In looking at the bullet
8 points that were put together, I think the answer
9 is yes, they should be amended, because people are
10 saying that these are the areas that need to be
11 amended. And I guess the second part of what
12 you're asking, Madam Chair, is how — how do we go
13 through this now. I think in generally looking at
14 this, we would move in that same direction, that if
15 there are — if there are specific areas that we
16 need to see amended, then we would make those
17 points made here in this forum. Is that correct,
18 Madam Chair?

19 ROSITA WORL: Well, in going — I guess I could
20 start off and say, I think — I agree that we need
21 to clarify that 90-day rule, you know. I never
22 know when it starts, you know.

23 CARLA MATTIX: Lesa is going to put the list up
24 so everybody can see some of the things we're
25 talking about.

1 ROSITA WORL: Okay. It's up. We're ready. So
2 I agree that - I, for one, believe that that 90-day
3 rule needs to be clarified because I never know
4 when it counts or if it counts at all. So I would
5 support, you know, that - some revision to clarify
6 the 90-day rule.

7 I had a question on the Hui Malama, remove Hui
8 Malama. That's in the legislation, as I recall,
9 and I don't know that we could. Could we remove it
10 if it's in the legislation?

11 STEPHEN SIMPSON: The mention of - the statute
12 includes Hui Malama as an example of a Native
13 Hawaiian organization. As I understood the thrust
14 of the comment was that that was not - that Hui
15 Malama - that it may give undue - including that
16 example also in the regulations may give undue
17 significance to Hui Malama, but it's in the
18 statute.

19 CARLA MATTIX: It's in the statute, so it's not
20 just an example.

21 STEPHEN SIMPSON: Well, yes, actually Carla is
22 absolutely right. It says - and it's not just an
23 example of an NHO. It says an NHO includes Hui
24 Malama. It is, in fact, you know - we are
25 instructed by Congress to recognize Hui Malama as

1 an NHO.

2 ROSITA WORL: Okay. Does the committee have
3 any comments on any of the proposed amendments?

4 DAVID TARLER: And just to clarify, Madam
5 Chair, certainly the committee can use its
6 discretion to review the comments and respond to
7 those, but you're free to make any additional
8 comments that you wish on the – on the question.

9 LINDALEE FARM: Madam Chair, may I ask a
10 procedural question? I guess, and I'm speaking
11 personally at this point, it would be helpful to me
12 to look at the proposed draft changes, and then
13 from once getting the proposed draft changes then
14 make additional comments. Am I correct in that we
15 will have that opportunity?

16 DAVID TARLER: Everyone will have that
17 opportunity.

18 LINDALEE FARM: Thank you.

19 DAVID TARLER: If, after the discretionary
20 review, there is a decision to propose amendments
21 to the NAGPRA regulations, those proposed
22 regulations will be published in the Federal
23 Register as proposed with a comment period and the
24 Review Committee will have an opportunity to make
25 comments on the proposed regulations. But this is

1 a pre-proposed regulation stage of the process.

2 ALEXANDER BARKER: Madam Chair, if I may?

3 ROSITA WORL: Go ahead.

4 ALEXANDER BARKER: In answer to the actual
5 question asked, yes, I believe it is important to
6 amend certain portions of 43 C.F.R. 10. My sense
7 is that apart from some minor issues, which I think
8 have been addressed by a variety of concerns,
9 virtually all of the concerns I am aware of at the
10 moment involve Section 11. Whatever the other
11 problems with the older regulations, I think for
12 the most part they've proven to be workable, and we
13 can point to a number of success stories by tribes,
14 by museums, by Federal agencies, and most
15 importantly as collaborations among two or three of
16 those entities. And at least within archaeology,
17 there are generations of students who have grown up
18 entirely within the orbit of NAGPRA. This is the
19 only set of expectations they have ever known for
20 how research should be done, they embrace them
21 fully, and I think are committed to them.

22 The Section 11 provisions are more
23 problematic. And while I'm not sure that everyone
24 at the table would necessarily agree on which parts
25 are problematic, it's my sense that there's a

1 fairly broad agreement that there are parts of
2 those regulations which do need to be amended, and
3 I can give some examples from my point of view.
4 I'm not sure that they would be shared by everyone.
5 But that seems to be where the primary concerns
6 lie, at least in my opinion.

7 I'll give you a couple of obvious examples.
8 The protections that are included in Section 7 are
9 not extended under the Section 11 regulations. The
10 protections of liability for museums are not
11 extended because this is not for repatriation of
12 remains but under the regulations for disposition
13 of the remains, which places institutions in legal
14 jeopardy for complying or for not complying, which
15 is, I think, a manifestly untenable situation.

16 In the same way, the regulations in the
17 statute specifically afforded an opportunity for
18 scientific study, if such scientific study was
19 important and recognized as important. That is not
20 extended under the Section 11 provisions, which
21 sets up an odd situation in which if remains are
22 known to be affiliated there is still a protection
23 from scientific study, but if they're not
24 affiliated there is no such provision. That seems
25 to me unusual. The tribes who are able to

1 demonstrate affiliation are still expected to allow
2 scientific study but if no affiliation can be
3 demonstrated, there is no provision for such study.
4 That seems to be manifestly against the spirit and
5 intent and, I think, the actual wording of both the
6 statute and the original regulations.

7 Finally, from a purely pragmatic standpoint,
8 there's a reversal in the expectations of the
9 regulations. The original regulations assume that
10 museums are appropriate repositories for human
11 remains absent a claim. The new regulations
12 manifestly state and directly state – correction,
13 directly state that museums are not, and there's
14 the presumption that they do not have right of
15 possession under any circumstances, unless that
16 right of possession has been directly given to them
17 by a lineal descendant or affiliated tribe. In the
18 context of regulations, which presume that no such
19 lineal descendant or affiliation can be
20 established, that means that it's presuming that no
21 museum is an appropriate repository and can
22 properly possess those remains absent a claim. And
23 I would submit that museums are the appropriate
24 repository until such time as a claim has been
25 advanced.

1 Thank you.

2 ROSITA WORL: Any further comments?

3 My suggestion is that we take the regulations
4 and the listening sessions and we study them, prior
5 to the next meeting, and then let's go over it at
6 the next meeting.

7 ALEXANDER BARKER: Madam Chair, if I can ask
8 for clarification of some – if this is set aside
9 for the next meeting, will the comments be included
10 since the listening period seems to be ending at
11 the end of this month? Is this actually a workable
12 option for the committee to set aside our comments
13 until the next meeting?

14 SHERRY HUTT: Excuse me, just a second.

15 (Discussion off record.)

16 SHERRY HUTT: On behalf of the program I feel I
17 need to make a statement. The Review Committee
18 receives monthly updates from the program and part
19 of those monthly updates, going back as far as
20 January, was to let the Review Committee know that
21 we were undertaking this review of 43 C.F.R. Part
22 10, and that we would be having listening sessions.
23 In additional updates, we indicated that we hoped
24 that it would be an agenda item for this meeting.
25 You – your materials for that were the regs

1 themselves, and the forewarning that we wanted to
2 do this and you should be thinking of it began in
3 January.

4 You are certainly – I mean, it's your agenda.
5 You can certainly – you can put this on the agenda
6 in November if you so desire. The program, as of
7 July 1, will go into the review of the comments and
8 the drafting phase of proposed rules. So one of
9 two things, when you get – if you choose – if you
10 have no further comments today and you have further
11 comments in November and you want to make this an
12 agenda item in November, certainly that's fine.
13 That's your prerogative. If in November we have a
14 published rule, then you'll be commenting on the
15 actual proposed rules. If we do not have a
16 published set of proposed rules that that time and
17 you still have comments, obviously your comments
18 will be received. Whether they can be interspersed
19 in that package of proposed rules at that time will
20 depend on where they are in review at the
21 Department of the Interior for proposed rules. If
22 you come up with something new in November it may
23 be a subsequent package of rules.

24 So we're – the purpose of these listening
25 sessions was to receive input as broadly as we

1 could. The issue is if you have a problem, what's
2 the problem focus, either give us ideas or
3 solutions or just point out the problem and – so
4 that we could be as comprehensive as we possibly
5 can be, because it's not often that any Federal
6 agency opens up its entire slate of enabling
7 regulations to review. So we'll capture everything
8 we can in the slate that goes forward, and if
9 something new comes up in November, it will depend
10 on where it's at in that drafting phase. It may be
11 a subsequent set of amendments in due course
12 whenever that next occurs.

13 ROSITA WORL: Okay. So what's the wish of the
14 committee? I have a question, maybe Merv might be
15 able to answer, on this – on 10.5, the
16 consultation, concern that the amendments to the
17 legislation place more emphasis on the rights of
18 the scientific interests than Native rights. And
19 we're – this one we're talking about consultation
20 and we do have, you know, the Federal requirement
21 of consultation. So I'm assuming that those – we
22 would develop it in – so that it's compatible with
23 the Federal requirement of consultation. That's
24 how I would envision that it would be drafted.

25 MERVIN WRIGHT, JR.: Madam Chair, a general

1 comment just regarding consultation – I mean, I’m
2 certainly unfamiliar with the first bullet point
3 under 10.5, Consultation. When it comes to
4 consultation, I mean, certainly the Federal
5 government has that trust responsibility, you know,
6 to engage in consultation with tribes. I feel that
7 they – there may be comments stating maybe some
8 discomfort with that part of, you know, the Federal
9 duty in engaging in that consultation with tribes.
10 So, you know, just a general comment that, you
11 know, with regard to consultation and the policy
12 that had been posted in the Federal Register,
13 consultation is going to be what the Interior
14 Department adopts as part of that policy, as well
15 as the National Park Service, in having like a sub-
16 policy being more detailed with regard to
17 consultation.

18 ROSITA WORL: Okay. Are there any further
19 comments on the regulations?

20 LINDALEE FARM: Madam Chair?

21 ROSITA WORL: Go ahead.

22 LINDALEE FARM: I have, I guess, a comment with
23 respect to Section 10.15, Limitations and Remedies,
24 and what a timely claim means, and if that could be
25 clarified. In particular, if a timely claim is

1 filed subsequently, what happens to the process?
2 And if it could be reviewed in conjunction as to
3 the 90-day rule, how does the 90-day rule work?
4 What are the obligations of the museums? What
5 happens at that point? Does the clock start again?
6 I find that particular provision confusing.

7 ROSITA WORL: Okay. Thank you.

8 Alec?

9 **REVIEW COMMITTEE MOTION**

10 ALEXANDER BARKER: Madam Chair, may I introduce
11 a motion? I'd like to move that the committee
12 express its recommendation that the Department
13 revise 43 C.F.R. 10, particularly Section 11, on
14 the basis of the previous comments received from
15 both its listening session, written comments that
16 have and will be submitted, and the additional
17 comments of the Review Committee, which hopefully
18 we will able to submit either during this period or
19 in subsequent meetings.

20 ROSITA WORL: What section was that?

21 ALEXANDER BARKER: Eleven.

22 ROSITA WORL: Eleven. We have a motion on the
23 floor. Is there a second to that motion?

24 MERVIN WRIGHT, JR.: I'll second it.

25 ROSITA WORL: Okay. Would you review that

1 again for us, Alec?

2 ALEXANDER BARKER: I move that the committee
3 recommend that the Department revise 43 C.F.R.
4 Section – I'm sorry, 43 C.F.R. 10, Section 11,
5 based on the written comments that have been
6 received and will be received prior to the close of
7 the listening period, or whatever it is called.

8 CARLA MATTIX: Can I ask for clarification,
9 because the first time you made the motion you
10 said, 43 C.F.R. Part 10, including especially
11 looking at 10.11, which is the section, the newest
12 piece of the rule on cultural unidentifiable human
13 remains, repatriation or disposition of culturally
14 unidentifiable human remains. I think that was
15 your first statement.

16 ALEXANDER BARKER: Yes.

17 CARLA MATTIX: Then just the most recent one
18 you said just 10.11. So can you clarify?

19 ALEXANDER BARKER: I'm sorry. I believe that
20 the actual question that was asked by the
21 Department was should 43 C.F.R. 10 be revised and,
22 if so, how?

23 CARLA MATTIX: Right.

24 ALEXANDER BARKER: So the motion is that, yes,
25 43 C.F.R. 10 should be revised, particularly

1 Section 11, and that it be based on the comments
2 that have been and will be received, and also
3 additional comments from the Review Committee.

4 MERVIN WRIGHT, JR.: Yeah, I'll second that.

5 ROSITA WORL: Okay. We have a motion made and
6 seconded. Is there any further discussion?

7 If not, we'll call for the question. All
8 those in favor signify by saying aye.

9 ALEXANDER BARKER: Aye.

10 LINDALEE FARM: Aye.

11 ERIC HEMENWAY: Aye.

12 ADRIAN JOHN: Aye.

13 ROSITA WORL: Aye.

14 MERVIN WRIGHT, JR.: Aye.

15 Those opposed say no.

16 That motion is adopted.

17 So — and as individuals, we still have the
18 right also to make — to submit written comments.

19 DAVID TARLER: By July 1st, correct.

20 ROSITA WORL: Okay. Thank you.

21 Okay. Do we have any further agenda items,
22 Mr. DFO?

23 DAVID TARLER: The only other agenda item is to
24 have public comment.

25 ROSITA WORL: All right. Okay. We will open

1 up the Review Committee to public comment.

2 DAVID TARLER: And at this time I'd like to
3 call on Pete Jemison, the NAGPRA Coordinator for
4 the Seneca Nation.

5 ROSITA WORL: Welcome, Pete.

6 PETE JEMISON: I guess I go down here.

7 ROSITA WORL: Yes, please. Good morning.

8 **PUBLIC COMMENT**

9 **PETE JEMISON**

10 PETE JEMISON: Thank you. Let me just start by
11 saying (Native American language). I give thanks
12 that each of you are well. I gave a title to my
13 comments, "NAGPRA at 20 Years of Age," and I'm just
14 going to read part of it and then add some
15 additional comments.

16 The Haudenosaunee Standing Committee on Burial
17 Rules and Regulations was formed in 1989, on the
18 eve of the passage of NAGPRA. The committee
19 represents the Tonawanda Seneca, Cayuga, Onondaga
20 Nation, Tuscarora Nation, and the Mohawk Nation.
21 From 1989 until 1999, I chaired the Standing
22 Committee and represented the Seneca Nation of
23 Indians in matters of repatriation. The Oneida
24 Nation of New York and the Oneida Nation of
25 Wisconsin had carried on repatriations separately.

1 We began our visits to museums with a trip to The
2 Field Museum in 1989.

3 From the beginning we decided to work as a
4 confederacy on matters of repatriation. Our
5 approach didn't make things easier, because museum
6 personnel and their attorneys interpreted the
7 NAGPRA law to say the Standing Committee was not a
8 federally recognized entity. Although our
9 individual nations are federally recognized, we had
10 to provide letters from each nation – from each
11 nation's counsel for repatriation stating that the
12 Standing Committee would file a request on their
13 behalf. Early on we learned that there were
14 museums that wanted to resist NAGPRA. They
15 disagreed with the law. We also found museums
16 ready to begin the repatriation process, even
17 though the regulations were not yet complete.
18 Also, we dealt with the National Museum of the
19 American Indian and its own law.

20 We were at first overwhelmed with the
21 summaries sent, because there were many more
22 museums than we knew of which held collections of
23 Haudenosaunee material. Chairing the Standing
24 Committee, I've learned that certain museums have a
25 fixed idea of when Seneca people came into

1 existence, and basically they used the date 1550.
2 Remains that come from before that time they do not
3 say are Seneca. They want to call them
4 unaffiliated. We disagree. Human remains that are
5 thought to come from a time period before that, you
6 know, have been labeled as culturally unaffiliated.
7 I am pleased to say that there are archeologists
8 working today who are challenging the dates that
9 are given to some of our sites and the
10 identification that previous archaeologists
11 developed.

12 Today, I want to offer some comments on the
13 effectiveness of NAGPRA and also, at the end, the
14 ineffectiveness of NAGPRA. The Haudenosaunee have
15 brought home the human remains of our ancestors but
16 many more still remain in boxes, stored in museums
17 around the United States. Because we have been
18 persistent, some of the resistant museums have been
19 forced to return our ancestors. Sometimes, our
20 letters requesting return have to comply with the
21 personal views of museum staff. I have
22 accommodated that just to complete the
23 repatriation, not because I agree with their
24 personal views. Wampum and sacred objects have
25 also come back to our – to our possession because

1 of our persistence and also because certain museum
2 staff members have pushed the senior staff and the
3 board of their museum to comply with Federal law.

4 The remains – there remains today members of
5 the museum committee – community who view NAGPRA as
6 taking away their rights as scientists. In spite
7 of some gains to ensure the human rights of Native
8 Americans, there are people, and primarily I'm
9 referring to the attorneys for museums, who view
10 NAGPRA as unconstitutional.

11 I'm going to provide one comment that must
12 have an application for other Native Americans.
13 Since the Revolutionary War, Haudenosaunee people
14 have lived in Canada and the United States. We
15 preexisted before these boundaries were created.
16 When we make a request for sacred objects or wampum
17 that belongs to a nation of the Haudenosaunee, we
18 stress that there is only one Confederacy, there is
19 only one Haudenosaunee. We are divided by a river,
20 but we remain Seneca, Cayuga, Onondaga, Oneida,
21 Tuscarora, Mohawk, regardless of which side of the
22 border we live on. But to comply with U.S. law, we
23 must provide an additional burden of proof in order
24 to repatriate items covered by the law to their
25 correct Canadian communities. Some institutions

1 use the law to frustrate repatriation efforts and
2 force us to meet that additional burden of proof,
3 an example would be the Rochester Museum and
4 Science Center.

5 There was a proposed amendment to NAGPRA to
6 include the phrase "or was". This would enable
7 human remains now held in limbo to be repatriated
8 to contemporary Native nations. Now, the amendment
9 adopted leaves the museum's discretion to return
10 associated funerary objects or not return them, if
11 they believe the NAGPRA law with its present
12 amendment amounts to a taking. This is one of the
13 most ironic views I can imagine. Now, human
14 remains, and in particular the associated funerary
15 objects – particularly the funerary objects, I want
16 to say – taken as treasure 90 years ago, without
17 any permission, can be kept because of property
18 law. The phrase I prefer is "amateur
19 archaeologists stole it fair and square," and
20 museums currently in possession of funerary objects
21 can say, "They are ours now because we've hung on
22 to them." That is not legal. That is not lawful.
23 That is condoning theft of our heritage as Native
24 Americans.

25 What NAGPRA does not protect I want to spell

1 out. In Logan, West Virginia, the construction of
2 a new state office building caused the unearthing
3 of human remains, and this just happened about
4 approximately three months ago it began. First,
5 there were two sets of human remains that were
6 unearthed by a construction company. In the state
7 of West Virginia, even a state agency is not
8 required to do archaeological testing before
9 construction begins. They can go on to a site,
10 start construction, and then whatever the
11 consequences may be, then they have to deal with
12 it. And in Logan, West Virginia, they started
13 construction and ran into two sets of human
14 remains. They shipped those two sets off to the
15 Smithsonian for identification. Then they brought
16 in archaeologists, the archaeologists found two
17 more sets of human remains. At about that time,
18 they contacted the Eastern Band of Shawnee in
19 Oklahoma, and the Eastern Band of Shawnee contacted
20 us, through our representative, Chris Abrams, and
21 the Seneca Nation got involved and the Standing
22 Committee got involved. Basically, the Eastern
23 Band of Shawnee turned to us for help.

24 We sent two of our representatives to Logan,
25 West Virginia to retrieve the first four sets of

1 human remains that were found there and to speak to
2 those remaining remains that we knew were there
3 based on features that the archaeologists were
4 finding. I'm going to skip ahead a little bit. In
5 the end, in addition to the 4 that were first
6 unearthed, 34 additional human remains were found
7 in the process of constructing that office
8 building. We could not do anything to stop them
9 because there was no Federal money involved in this
10 particular construction project. Thirty-eight sets
11 of human remains came out of this area where they
12 were going to build this state building, and the
13 funerary objects that are associated with them. We
14 wound up having to take care of them, and because
15 there were no satisfactory options given to us as a
16 place for reburial in West Virginia, we wound up
17 having to bring them back to our home territory to
18 take care of them, again on behalf of the Shawnee.

19 When we finally received the last 34 sets of
20 human remains, we found funerary objects that
21 conservatively probably date to 3,000 years ago.
22 There may be, in fact, some that are older. So
23 this was a site that was used over an extended
24 period of time, it was used sequentially, and
25 basically it was completely disturbed. There are

1 still human remains in the ground there, which we
2 were allowed – we were able to leave in situ
3 because the construction wasn't going to impact
4 them. Even after our representatives made two
5 trips there, through a phone call we had about a
6 week ago, we learned that there were still a set of
7 human remains they hadn't returned to us. And now
8 we're left with that problem of what to do with
9 those.

10 I just want to say, you know, what I'm
11 pointing out here is that state law in West
12 Virginia needs a drastic revision. Our
13 representatives did meet with the governor of West
14 Virginia. We expressed our deep concern about the
15 policy of not requiring any archaeology before
16 construction begins, and about what I would call
17 really a calloused attitude about, you know, the
18 discovery of human remains. They couldn't stop the
19 project because of money, because they had invested
20 too much in the design of the building, they had
21 set foundations, and things like this, and
22 therefore, in their mind, they couldn't – they
23 couldn't move the building. So this is what NAGPRA
24 does not protect, even though it is the Graves
25 Protection and Repatriation Act, it does not

1 protect us Native Americans from a situation like
2 the one I'm describing.

3 I want to say this in closing regarding
4 consultation, the last opportunity we had for what
5 was called consultation was a phone call. We were
6 on a phone link. We could – people could make
7 comment but there was no opportunity for
8 interaction. There was no taking questions,
9 responding. It was just people making comment.
10 That's not consultation. Consultation should be
11 conducted in a face-to-face manner. Consultation
12 should involve an opportunity to ask questions and
13 get responses. And that's not what consultation
14 was in that particular instance. I want to thank
15 you for this opportunity this morning. Those are
16 my comments.

17 ROSITA WORL: Thank you very much. Does anyone
18 have any comments or questions?

19 Thank you, Pete.

20 Do we have any further public comment?

21 DAVID TARLER: I know of no one else who wishes
22 to comment, but I would call on the audience if
23 anyone wishes to come down and comment to do so
24 now.

25 ROSITA WORL: All right. Do we have any

1 further agenda items, Mr. DFO?

2 **CLOSING COMMENTS**

3 DAVID TARLER: We have no more agenda items,
4 Madam Chair. At this time, I – we in the National
5 NAGPRA Program and the staff to the NAGPRA Review
6 Committee would again wish to express our deep
7 appreciation for the warm welcome and the generous
8 hospitality of the Haudenosaunee Standing Committee
9 on Burial Rules and Regulations, the Onondaga
10 Nation, and Syracuse University College of Law, and
11 to Christine Abrams of the Seneca Nation and the
12 Haudenosaunee Standing Committee for their work in
13 putting together the venue and the several events
14 for this Review Committee meeting.

15 ROSITA WORL: Thank you, David, and we – the
16 Review Committee certainly shares that and we want
17 to invite our new friends up to Alaska sometime.

18 Did you have something, Merv?

19 **COMMENT – MERVIN WRIGHT, JR., ON BEHALF OF SAN**

20 **CARLOS APACHE TRIBE**

21 MERVIN WRIGHT, JR.: Yeah, last week when I was
22 in Washington, Ms. Vernalda Grant from the San
23 Carlos Apache Tribe approached me with several
24 letters and a couple statements that she shared
25 with me, and she asked me to read one letter in

1 particular here at the committee. And yesterday,
2 during public comment as I looked at the letter, it
3 is a template letter. And I did confer with
4 Ms. Grant yesterday afternoon, after our meeting
5 concluded, to understand more clear what the
6 intention is of this letter. It is to Secretary
7 Salazar, and she told me that it is a letter
8 soliciting support for their – the issue that they
9 have with – with the NAGPRA law. And so I'm going
10 to read this letter, it is a letter soliciting
11 support for the San Carlos Apache Tribe.

12 "Dear Secretary Salazar: The purpose of this
13 letter is to strongly oppose the National Park
14 Service, the National Native Graves Protection Act
15 NAGPRA Program's ongoing policies of, one,
16 permitting museums to refer to objects claimed by
17 Native American groups under NAGPRA solely as
18 cultural items instead of their specific object
19 category – unassociated funerary objects, sacred
20 objects, and/or object of cultural patrimony – in
21 Federal Notices of Intent to Repatriate, which are
22 published by the Department in the Federal
23 Register; and two, preventing the NAGPRA Review
24 Committee from hearing requests on repatriation and
25 the repatriation process even if claimed items have

1 been obtained prior to Review Committee meetings.
2 These policies conflict with the spirit, intent,
3 and meaning of NAGPRA and set bad precedent. We
4 respectfully request that you correct these
5 policies before they do more harm to Indian tribes
6 and Native peoples."

7 So I – in talking to Ms. Grant yesterday, you
8 know, my question was really where's this letter
9 going, how is it – what I mean by where is it going
10 is, like, what is its intent and where – what is
11 the purpose of presenting it. And she, more or
12 less, told us, and we heard the Apache case in
13 Florida in 2009, and looking at that term "cultural
14 items" and how it was published in the Federal
15 Register, you know, I think I can appreciate and
16 understand really what the concern is being
17 reflected here in the letter. And so, you know,
18 she just asked that I read it for the record, so
19 having done so, thank you.

20 ROSITA WORL: Thank you. Are there any
21 comments on that?

22 Actually in discussions we've had, you know,
23 like on the dispute procedures, we note that there
24 was reference to – we use the term "cultural
25 items," and one of the suggestions we had – Eric

1 and I were talking about it, is that we would – in
2 recognition of the Apaches' concern that we
3 wouldn't use that word in our own procedures that
4 we have and that we would, you know, use all of the
5 terms. So I don't know, you know, if that helps
6 but it's – I think we want to demonstrate to the
7 Apache, you know, our – we share their concerns and
8 want to support them. And I think that we did make
9 findings for the Apache. So just one – I think one
10 thing that we can do in support of them.

11 Does the – before we adjourn, does the Review
12 Committee have any final comments, any members of
13 the committee?

14 Did you have something, David?

15 DAVID TARLER: After the committee has
16 concluded its final comments, I did want to bring
17 to your attention that the Haudenosaunee had wished
18 to have a ceremony to conclude the meeting.

19 **CLOSING COMMENTS – CONT'D**

20 ROSITA WORL: Oh, wonderful. All right. Well,
21 I just want to thank the Review Committee for all
22 of their hard work and especially again welcome our
23 two new members. It looks like we're going to have
24 two very productive new members, and we're very
25 excited about having you here and want to thank you

1 for all of your good work. And I want to thank the
2 program for all of its support. You got all of the
3 material out in a timely – timely way, so we really
4 appreciate all of the support that we received.
5 And Lesa, also, thank you for the great job that
6 you do.

7 So I guess we're ready for – we will adjourn
8 and – right after – right after the ceremony.

9 **CLOSING CEREMONY**

10 PETE JEMISON: Because we opened this gathering
11 with offering words of thanks, we also close the
12 same gathering with our words of thanksgiving. And
13 in our language we refer to this as (Native
14 American language). So some of you were present
15 the other night when I talked about this, so I'm
16 just going to mention again what I'm going to say,
17 and then I'm going to offer those words in a
18 shortened version in my language.

19 At this time, we offer words of thanksgiving
20 for our Mother the Earth, that our Mother the Earth
21 is continuing to bring forth these gifts that each
22 and every one of us is dependent upon. Our Mother
23 the Earth supports our feet all the days of our
24 life, as we walk about. We turn our thoughts now
25 to our Mother the Earth, and we offer words of

1 thanksgiving to the Creator and now our minds are
2 one.

3 We offer words of thanksgiving at this time
4 for the water, both the new water that has come in
5 the form of rain overnight, the lakes, the ponds,
6 the creeks, the brooks, and even the great salt
7 bodies of water. We offer these words of
8 thanksgiving at this time, and for those beings
9 that live within those waters, we direct our
10 thoughts to the Creator and now our minds are one.

11 We offer words of thanksgiving for the
12 medicine plants that are growing upon our Mother
13 Earth, some of them growing very close to the
14 surface. One at this time we are gathering to give
15 thanks for is the wild strawberry. It shows us
16 that the cycle of growth is beginning again and
17 renewing itself, so we give thanks for all the
18 medicine plants, all the way up to those that are
19 the size of bushes at this particular time,
20 directing our thoughts to the Creator and now our
21 minds are one.

22 And then we give words of thanks for the four-
23 leggeds that we see running about, the very small
24 ones to the very large ones, those that have been
25 food – a food source to us in the past, the white-

1 tail deer. Some use the elk, the moose, the
2 buffalo, the bear. Each and every one of them has
3 a role to play, and they have been teaching our
4 people since we have been here. We offer these
5 words, we direct our thoughts to the Creator and
6 now our minds are one.

7 We offer words of thanksgiving for the birds,
8 whose voices we heard early this morning as the sun
9 was arising. They were giving their thanksgiving.
10 And we hear those words and we see now their
11 colors, which beautify our world. Some of those
12 larger birds have been a source of food for our
13 people. At this time we turn our attention to the
14 Creator, we offer words of thanksgiving for the
15 winged creatures and now our minds are one.

16 At this time, the Creator has placed on earth
17 for us foods that we can use. For us the most
18 important ones are the corn, the beans, and the
19 squash. Those three sisters are now in the ground
20 and they're beginning their growth. The Creator
21 has made it so that they are given enough heat and
22 enough water so that they may survive here on this
23 earth. We turn our thoughts to these, which we
24 call (Native American language), and we give thanks
25 and now our minds are one.

1 And next we turn our thoughts that there are
2 trees in the forest and in the woods around here,
3 and that each and every one of those woods has a
4 role to play. They may make up our buildings.
5 They may heat our homes. They may be a source of
6 food for some and they may also be, like the sugar
7 maple, a source of medicine that comes in the early
8 spring. At this time we offer words of
9 thanksgiving for all those trees, and especially
10 for the sugar maple, we direct our thoughts to the
11 Creator and now our minds are one.

12 We offer these words of thanksgiving at this
13 time that we are feeling at this moment, the warm
14 and gentle breezes as we walk about. The earth is
15 being warmed again, and most of the time the wind
16 is a benefit to us, but we acknowledge that there
17 are times when the wind is powerful enough to
18 scrape things off the surface of the earth and we
19 have a hurricane or a tornado. And right now we
20 give our thanks to the Creator for the winds that
21 come from the four directions and now our minds are
22 one.

23 We offer words of thanksgiving for the sound
24 we heard overnight, the sound of the thunder beings
25 rolling across the land announcing that water was

1 coming again in the form of rain and that this rain
2 would replenish the springs and the wells and bring
3 to life these plants, the seeds that had been
4 placed in the ground through the growing season,
5 the beginning of the growing season. At this time
6 we offer our words of thanksgiving to the Creator
7 for our thunder beings which are still doing their
8 job and now our minds are one.

9 We offer words of thanksgiving that our elder
10 brother the Sun has begun his journey across the
11 sky, providing the daytime light and allowing each
12 and every one of these medicine plants, and the
13 plants that we will rely on, to grow. We give
14 thanks that it is not too hot and that it is just
15 right for our people to live here. We give these
16 thanks at this time to our Creator and now our
17 minds are one.

18 We offer words of thanksgiving at this time
19 for the moon. We refer to the moon as our
20 grandmother. Our grandmother has many
21 responsibilities, controlling the tides on the
22 earth, giving us a cycle for our ceremonial way of
23 life. We are passing out of the moon of (Native
24 American language). For our people, (Native
25 American language) means the time when that wild

1 strawberry ripens. We observe that moon as our way
2 of setting our ceremonial calendar. Also, the moon
3 gives a cycle to the women by which they can bring
4 forth life into this world. So at this time, we
5 offer words of thanksgiving for our grandmother and
6 now our minds are one.

7 And we offer words of thanksgiving for the
8 stars. Each and every one of them has a role to
9 play, the morning and the evening stars. We
10 acknowledge that at a certain time in the summer
11 when it's extremely hot, we'll find dew on the
12 plants that are growing, and we believe this is
13 indeed a part of the role of the stars. We offer
14 these words of thanksgiving and now our minds are
15 one.

16 We also offer words of thanksgiving that our
17 people have been blessed by messengers that have
18 come among our people. They've come with a message
19 of how we are to live as human beings, and with a
20 vision of the future that was coming. We are
21 living that future that one of our great leaders
22 had in his vision. We call him by name, Handsome
23 Lake, and the vision he gave us is called "The Good
24 Word," in our tongue *Gaiwiio*. At this time, we
25 offer words of thanksgiving that the Creator has

1 sent those messengers to our people and now our
2 minds are one.

3 And now as you are about to depart here and go
4 on your journey, I am reminding myself and each of
5 us here that we are the beneficiaries of four great
6 messengers who look after each and every one of us
7 as we travel about. I direct my thoughts to the
8 Creator and offer these words of thanksgiving that
9 each and every one of you will find your way home
10 in a safe manner and find those loved ones there
11 waiting for you, and you will exchange your
12 greetings again of love and friendship. We direct
13 our attention to the Creator and offer words of
14 thanksgiving for the four messengers and now our
15 minds are one.

16 And now we have reached the Creator's world.
17 It is the Creator's hand in everything that I have
18 mentioned that we are the beneficiaries of and that
19 we in a humble way today, I gather the thoughts of
20 each and every one of you here and I direct them to
21 the Creator, offering our thanksgiving for this
22 gathering that we have had here within our
23 territory for this opportunity to welcome and to
24 host you here and that you have gained something
25 from this gathering that we have had.

1 And now in my language, (Native American
2 prayer) .

3 ROSITA WORL: Thank you very much, and safe
4 travels. We are adjourned.

5 **MEETING ADJOURNED**

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